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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	NO. CR 13-720 CRB
)	
Plaintiff,)	UNITED STATES'
)	SENTENCING MEMORANDUM
v.)	
)	
PAUL SLOANE DAVIS,)	
)	
Defendant.)	

INTRODUCTION

On March 19, 2015, defendant pleaded guilty to Counts One through Fourteen of the Indictment, charging him with conspiracy, mail fraud, and wire fraud, in violation of 18 U.S.C. §§ 1349, 1341, and 1343, respectively. There is no plea agreement in this case.

Co-defendant Diane Cobb pleaded guilty on July 2, 2014. Dkt. 29. She is awaiting sentencing, but in her plea agreement agreed to recommend “a sentence of imprisonment of no less than the low end of the Guidelines range for offense level 22 and [her] Criminal History Category as calculated by the Court,” which, with a Criminal History Category of I, would be 41 months. Dkt. 29 at 5.

U.S. Probation has recommended that the defendant is in Criminal History Category I, and has recommended an Offense Level of 25, resulting in a Guidelines range for defendant of 57 to 71 months of imprisonment. Probation also recommends a downward variance, based on § 3553 factors, to a

SENTENCING MEMORANDUM

1 sentence of 24 months' imprisonment, followed by three years of supervised release, \$1,713,099.37 in
2 restitution, and no fine.

3 The government agrees with Probation's calculation of the defendant's Guidelines Range of 57
4 to 71 months. The government recommends a low-end Guidelines sentence of 57 months, followed by
5 three years of supervised release, \$1,713,099.37 in restitution, and no fine.

6 DISCUSSION

7 A. The Defendant's Guideline Calculation

8 The government agrees with Probation's calculation of the Guidelines, set forth below:

9 a.	Base Offense Level, § 2B1.1(a)(1)	7
b.	Loss or gain amount, § 2B1.1(b)(1)	+16
10 c.	10 or more victims, § 2B1.1(b)(2)(A)(i)	+2
d.	Vulnerable victim, § 3A1.1(b)(1)	+2
11 e.	Acceptance of Responsibility	-2
f.	Adjusted offense level	25

12 Defendant, along with his co-conspirator Diane Cobb, defrauded at least 21 investors, many of whom
13 were retirees, out of well over \$2 million, with Ponzi payments going back to some investors, for a total
14 loss of \$1,713,099.37. PSR ¶¶ 10, 17. This results in a +2 enhancement for the number of victims and a
15 +16 point enhancement for a loss amount of greater than \$1 million under § 2B1.1(b)(1)(I).

16 One of defendant's victims, C.C., was in her early 70s when her husband died in a car accident
17 and defendant personally visited her to convince her to invest her husband's life insurance proceeds with
18 defendant. PSR ¶ 16. This results in a +2 enhancement for a vulnerable victim under § 3A1.1(b)(1),
19 and this enhancement applies only to defendant and not to Ms. Cobb.

20 Finally, defendant was charged in October 2013 and arrested November 2013, but did not plead
21 guilty until March 19, 2015, about 17 months after his arrest, slightly over 3 weeks before trial was
22 scheduled to begin, and after the government had expended substantial resources preparing for trial.
23 PSR ¶ 1. Defendant thus did not timely notify the government of his intention to plead, so the
24 government is not recommending the third point under § 3E1.1(b).

25 Given that the defendant's Adjusted Offense Level is 25, and his Criminal History Category is I,
26 his Guidelines range is 57 to 71 months.
27
28

B. A Sentence of 57 Months Is Sufficient but Not Greater than Necessary to Comply with 18 U.S.C. § 3553(a)

Defendant, along with Diane Cobb, operated a significant Ponzi scheme over many years, stealing several million dollars in savings from over 20 victims around the country. His fraud was pathological, and involved stealing the retirement and educational savings of older individuals and spending it on meals at nice restaurants and expensive travel. There are no mitigating explanations to justify his fraud. For all of the reasons contemplated by § 3553 and the Sentencing Guidelines, he deserves a sentence of 57 months imprisonment.

1. Nature and Circumstances of the Offense

Defendant and Ms. Cobb operated a classic Ponzi scheme through their company, DM Financial. Defendant's role was the founder and "managing partner" of DM Financial, and according to victims, he was primarily involved in soliciting clients and investors while Ms. Cobb handled paperwork behind the scenes. PSR ¶¶ 8, 14. Defendant took advantage of his connections within the community of employees of Department of Energy contractors, for whom he did taxes and brokered mortgages. PSR ¶ 9. At some point, defendant began soliciting his tax and mortgage clients, as well as others, as investors in what were represented to be bridge loans to other contractors. PSR ¶ 9. The premise behind the bridge loans was that contractors needed to move around frequently and at times on short notice, and that sometimes, they would not be able immediately to sell their existing house before moving. PSR ¶ 9. The bridge loans were described as providing financing for a down payment on a home in a new location, and would then be paid back whenever the borrower was able to sell their previous home. PSR ¶ 9.

Defendant and Ms. Cobb relied on their reputation within the contractor community, prior business dealings as a loan broker and tax preparer, and their apparent "close association" with the contractor companies to pitch these investments. Victim Impact Statement of J.P. at 1. ("The defendants gained our trust over 20 years and 3 generations of contact with my family and by their close association with companies my family has worked for. . . . the [defendants] performed numerous apparently legitimate mortgage transactions or refinance quotations over the years to gain our trust . . ."). Because those within the contractor community were aware that other employees needed to move around a lot

1 and generally viewed their colleagues as creditworthy people, the victims believed these were safe
2 investments, and accepted defendant and Ms. Cobb's representations there were actually borrowers on
3 the other end of their loans. PSR ¶ 11. In reality, there were not. Instead, defendant and Ms. Cobb used
4 the names and other personal identifying information of their other financial clients (including some of
5 their victim investors) as fake borrowers to convince their victims to invest, and then stole the money for
6 themselves. PSR ¶¶ 12–13.

7 The government's financial investigation focused on the period from 2009 to 2013. During that
8 time, defendant and Ms. Cobb solicited and received investments of \$2.4 million. PSR ¶¶ 10, 15.
9 Approximately \$900,000 was paid to back to investors as Ponzi payment, and approximately \$1.5
10 million was pocketed by defendant and Ms. Cobb. PSR ¶ 10. Defendant spent the money on a
11 luxurious lifestyle, using the DM Financial corporate American Express card regularly for day-to-day
12 expenses, to pay for meals at nice restaurants, and for expensive trips to Thailand and other places. PSR
13 ¶ 15. This card was paid back out of investor funds. PSR ¶ 15.

14 The impact on their victims, who believed that they were making a safe investment in their
15 fellow Department of Energy contractors, was substantial. These were not wealthy individuals with
16 money to burn. They were regular individuals who made investments that they believed would be safe
17 and would support essential parts of their lives. A large number of victims were older and invested their
18 retirement money with defendant and Ms. Cobb. *See, e.g.*, Victim Impact Statement of A.C. at 1 ("This
19 crime occurred a few years after I retired and the funds I have lost represent a significant part of my
20 retirement savings."); Victim Impact Statement of L.L. and M.L. at 1 ("[W]e had worked hard and long
21 to have money for our retirement. This was to be security for us in old age. We are retired and have no
22 way to recover such a large loss."); Victim Impact Statement of S.B. at 1 ("The principal was part of my
23 retirement funds, and the lost income is part of what I relied on to pay for our monthly expenses. At 67
24 years of age, and in an effective retirement mode, it will not be possible for me to recoup the loss.").
25 Other victims lost the money that they had saved for the education of their children. *See* Victim Impact
26 Statement of J.P. at 1 ("The invested funds were part of those planned for the education of our
27 children."); Victim Impact Statement of K.S. at 1 ("We planned to withdraw our investment in the fall of
28 2013 to pay for the remainder of college expenses for our children."). Others effectively were unable to

1 keep their homes. *See* Victim Impact Statement of R.A. at 1 (“From a monetary standpoint Sloane and
2 Diane basically stole our house. We are currently renting a home . . .”).

3 Further, at least one investor, C.C., traumatically lost all of her savings to defendant. C.C.’s
4 husband had invested with defendant since the 1990s. Victim Impact Statement of C.C. at 1. C.C. then
5 invested \$60,000 of inheritance from her mother with defendant and Ms. Cobb in 2008. *Id.* at 2. Then,
6 after C.C.’s husband died in a car accident in 2009, defendant personally flew to visit C.C. and solicited
7 C.C.’s husband’s life insurance money as an investment. *Id.* at 3. As defendant was soliciting these
8 fraudulent investments from C.C., he and Ms. Cobb were using C.C.’s name as a “borrower” on
9 investments they obtained from other victims. *Id.* at 3. C.C. is in her late 70s, has been left with no
10 retirement funds and a reverse mortgage on her home, and is living on Social Security. *Id.* at 1. All of
11 the money she invested with defendant and Ms. Cobb disappeared. *Id.* at 4.

12 This conduct is egregious—stealing approximately \$2.4 million from retirement and college
13 funds and spending it on fancy dinners and vacations, and, supports a lengthy term of imprisonment.

14 2. *History and Characteristics of Defendant*

15 Defendant’s personal, educational, and professional background also supports a substantial
16 sentence. Defendant was raised in a stable household, the child of two Methodist ministers. PSR ¶ 44.
17 He suffered no mistreatment or traumatic experiences in his youth, PSR ¶ 44, and he has no substance
18 abuse problems, PSR ¶ 51. He graduated from college and has a master’s degree in accounting from
19 San Francisco State University. PSR ¶ 52. He worked as a financial professional for most of his career,
20 before taking advantage of his profession and committing this fraud. PSR ¶ 53.

21 Probation suggests that “defendant’s age, lack of prior criminal history, and the need to pay
22 significant restitution” warrant a sentence below the Guidelines range. PSR Sentencing
23 Recommendation at 2. Defendant has had no legitimate source of income for years and, given his
24 substantial financial fraud, defendant is unlikely to obtain legitimate work as a tax preparer or mortgage
25 broker in the future. The possibility of defendant making restitution should not be a factor in his
26 sentencing. Additionally, defendant’s lack of criminal history is typical for a white-collar defendant, is
27 reflected in his Criminal History Category, and does not warrant a sentence below the Guidelines range.

1 The only significant mitigating fact in this case is defendant's age. However, defendant engaged
2 in the fraud at least since 2009, when he was 70, and, based on the victim statement of C.C., likely much
3 earlier than that. Defendant should not be rewarded at sentencing for avoiding detection, prosecution,
4 and sentencing for at least seven years. A number of his victims were also elderly, and he stole the
5 money of those individuals, leaving them without the retirement that he was able to enjoy while he was
6 stealing \$2.4 million from them. His age does not outweigh the many other factors that strongly favor a
7 lengthy term of imprisonment.

8 CONCLUSION

9 With full consideration of all the sentencing factors set forth in 18 U.S.C. § 3553(a), the United
10 States respectfully requests that the Court impose a low-end Guidelines sentence of 57 months of
11 imprisonment, three years of supervised release, \$1,713,099.37 in restitution, and a \$100 special
12 assessment per count.

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14 DATED: August 12, 2015

Respectfully submitted,

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16 United States Attorney

17 _____/s/_____
18 BENJAMIN KINGSLEY
19 Assistant United States Attorney
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